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DEPARTMENT OF STATE

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March 12, 1970

INFORMATION MEMORANDUM FOR MR. KISSINGER  
THE WHITE HOUSESubject: Imminent Canadian Legislation on  
the Arctic

The Canadian Ambassador, Marcel Cadieux, along with Alan Beesley, Legal Adviser to the External Affairs Minister, and Ivan Head of the Prime Minister's Staff, called on Alex Johnson yesterday to discuss Canada's position on matters relating to the Canadian Arctic archipelago and law of the sea issues. For some months we have been discussing with the Canadians the prospect of bilateral consultations on these questions, focussing particularly on the preservation of the Arctic ecology and prevention of Arctic pollution. There has been mounting public pressure in Canada for unilateral Canadian action to prevent Arctic damage and Prime Minister Trudeau has been successful in fending off demands for an assertion of sovereignty over the whole archipelago including the waters and ice between the islands which we consider to be high seas. We had indicated to the Canadians our willingness to discuss the problem.

The Ambassador said that no Canadian Government could take a position inconsistent with Canadian sovereignty over the waters of the Canadian archipelago. He referred to various statements of the Prime Minister and the Minister of External Affairs spelling out the serious concern of the Canadian Government over the possibility of permanent damage in the Canadian Arctic as a result of oil pollution. Cadieux further maintained that Canada must very soon take positions on the questions of Arctic sovereignty, pollution control and the establishment of exclusive fishing zones.

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Cadieux then said that three courses of action were now under active consideration by the Government:

A. Drawing straight baselines around the outer perimeter of the Arctic islands. This amounts to a flat assertion of Canadian sovereignty over large areas of the high seas and would in the Canadian view constitute the whole area as Canadian internal waters. Cadieux indicated that the Canadian Government would recognize a right of innocent passage subject to Canadian regulations designed to safeguard the Arctic environment and Canadian coastal interests.

B. Establishment of a 100-mile Arctic pollution zone. The zone would extend 100 miles out from every point of Canadian land in the Arctic. The preventive legislation establishing such a zone would apply to all of the waters of the Arctic archipelago. The proposed legislation would prohibit negligent or deliberate acts of pollution, would require ships entering designated "shipping safety control zones" to meet prescribed safety standards, would impose requirements of financial responsibility, compulsory insurance and liability and would include enforcement provisions, among them the authority to arrest and detain vessels. The same legislation would also establish a 12-mile territorial sea applicable to all of the Canadian coast.

C. Establishment of fisheries closing lines across the Gulf of St. Lawrence, Bay of Fundy and other areas presently outside of Canadian territorial waters and beyond 12 miles of the Canadian coast.

Cadieux requested our views and said that "they would be taken into account." In the ensuing discussion the Canadians acknowledged that the Prime Minister had earlier talked about an international regime of the Arctic (a concept which we have endorsed in principle) but said that unless

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the regime were to come into being "immediately" and were to meet all of the Canadian requirements, Canada would have to act unilaterally since it is faced with "imminent irreparable damage." The Canadians made it clear that legislation on the 100-mile pollution zone would be introduced in Parliament prior to the Easter recess, i.e. within the next two weeks. Legislation on the fisheries closing lines would be introduced either simultaneously or shortly thereafter. The Canadians would not say whether or when legislation along the lines of course A (assertion of sovereignty) would be introduced.

During the discussion it became clear that the Canadians were not interested in having our comments, suggestions, modifications, or alternatives. They admitted their embarrassment in giving us so little advance notification. It is equally clear that the Canadian presentation was in fact only a notification and that they did not anticipate real bilateral consultations before the legislation is a fait accompli. The Canadians indicated that Prime Minister Trudeau is under "tremendous" pressure to assert sovereignty in the archipelago and must act very soon. The Canadians said they would be prepared to enter into multilateral discussions after the legislation is enacted looking towards a possible regime, but that any multilateral convention would have to "confirm" the Canadian legislation rather than reduce its effectiveness.

Legal Background:

The proposed Canadian legislation is in our view entirely unjustified in international law. There is no international basis for the assertion of a pollution control zone beyond the 12-mile contiguous zone; there is no basis for the establishment of exclusive fishing zones enclosing areas of the high seas; and there is no basis for an assertion of sovereignty over the waters of the Arctic archipelago. The proposed Canadian unilateral action ignores our frequent request that

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Canada not act until we have had an opportunity for serious bilateral discussions.

Comment:

The consequences of the intended Canadian action are serious for private United States interests. They are critical for national security interests and seriously degrade the entire United States law of the sea posture on which military mobility depends.

Part of this complex problem is that the SS Manhattan, a United States privately owned (ESSO) oil tanker and icebreaker, is preparing for an April 1 voyage through the Northwest passage as a follow up to its unprecedented passage through the same area several months ago. These passages have given tremendous support to inflamed nationalists pressing for declarations of Arctic sovereignty. They argue that such voyages with their attendant risk of oil spills which will irreparably harm Arctic ecology require immediate action by Canada to declare its sovereignty. If the Canadians impose their legislation prior to the next Manhattan voyage and if the Manhattan goes through, Canada may well assert that the Manhattan complied with Canadian law in recognition of Canadian jurisdiction over the Northwest passage. On the other hand, if the Manhattan does not make the voyage, the strong inference is that it held back because it either could not or would not comply with Canada's requirements, thus implying recognition of Canada's right to regulate. The third alternative is also damaging: if the Manhattan should make the trip in violation of Canadian regulations, the Canadians may well take enforcement measures against the vessel. The Canadian Transport Minister has stated in Parliament that "no icebreaker assistance or any other assistance will be provided unless the [Manhattan] meets with the qualifications that would, in fact, be in effect if the legislation were implemented." We have learned informally that the Humble Company will try to avoid any correspondence with Canadian officials

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relative to meeting any regulations which Canada may advance concerning ships voyaging into the Canadian Arctic.

We cannot accept the assertion of a Canadian claim that the Arctic waters are internal waters of Canada nor can we accept their other proposals. Such acceptance would jeopardize the freedom of navigation essential for United States naval activities worldwide, and would be contrary to our fundamental position that the regime of the high seas can be altered only by multilateral agreement. Furthermore, our efforts to limit extensions of coastal state sovereignty over the high seas worldwide will be damaged when other nations see that a country -- physically, politically and economically -- as close to the United States as Canada, feels it can undertake such action in the face of United States opposition.

Our opposition to the establishment of fishery closing lines by Canada has been restated many times and is well known to the Government of Canada. In 1967, bilateral discussions were held with Canada which resulted in a generally agreeable formula which provided not only for the special interest of the coastal state in fisheries conservation, but also the economic interest of the coastal state in fisheries adjacent to its coast. Since then and in a modified form the same principles have been incorporated in the United States/Soviet initiative for a law of the sea conference on the territorial sea and related issues (fisheries).

One of the principal elements in the 1967 United States/Canadian draft proposal was that it would provide preferences for Canadian fisheries in areas off its coast which would not be protected by the utilization of fishery

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closing lines. This factor is still relevant and valid and should serve as a basis for reopening the issue with Canada as the best alternative to the establishment of fishery closing lines.

*Theodore L. Eliot Jr.*

Theodore L. Eliot, Jr.  
Executive Secretary

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